

## **9 FAM 42.42 Procedural Notes**

*(TL:VISA-185; 02-26-1999)*

### **9 FAM 42.42 PN1 Recommending Reinstatement of Petition**

*(TL:VISA-185; 02-26-1999)*

a. If the consular officer believes that a petition revoked under 8 CFR 205.1(a)(3) warrants INS consideration for humanitarian reasons, the consular officer shall prepare a memorandum requesting such consideration and forward it with the petition to INS. In evaluating requests for reinstatement of a petition under such circumstances, INS has considered the following factors:

- (1) Disruption of an established family unit;
- (2) Hardship to U.S. citizens or lawful permanent residents;
- (3) Beneficiary is elderly or in poor health;
- (4) Beneficiary has had lengthy residence in the United States;
- (5) Beneficiary has no home to go to;
- (6) Undue delay by INS or consular officer in processing petition and visa; and
- (7) Beneficiary has strong family ties in the United States.

b. In the case of a petition approved by a stateside INS office, the consular officer shall send the memorandum and petition to the INS District Director having jurisdiction over the petitioner's place of residence in the United States. If the petition was approved either by an INS officer overseas or a consular officer, the consular officer shall send the petition and memorandum to the INS District Director having jurisdiction over the INS office or the consular post abroad.

c. If the consular officer does not believe that the humanitarian reasons are sufficient to warrant INS action, but the alien beneficiary or other interested party inquires about such action, the consular officer shall instruct the individual concerned to communicate with the approving INS office.

d. See 8 CFR 205.1(a)(3). [See 9 FAM 42.43 Exhibit I.]

## **9 FAM 42.42 PN2 Determining Derivative Status When Principal Adjusts**

(TL:VISA-185; 02-26-1999)

When the principal alien in a preference status who acquires permanent resident status by adjustment under INA 245 indicates that he or she has family who will follow-to-join, the Immigration and Naturalization Service (INS) generally sends the Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence, to the consular office at the time of the principal alien's adjustment. If, however, the Form I-181 has not been received, and the consular officer cannot determine that the principal alien's date of admission was prior to the cut-off date for the numerical limitation applicable to the spouse or child, the consular officer must seek verification of the principal alien's admission to the United States from INS directly to accord the family derivative status under INA 203(d).

### **9 FAM 42.42 PN2.1 Post Records**

(TL:VISA-185; 02-26-1999)

*In some instances, the post will have processed the principal alien's visa and will indicate the:*

- (1) Visa classification;*
- (2) Date of visa issuance;*
- (3) Chargeability; and*
- (4) Priority date.*

*Based on this record, post can easily verify and process the family member's visa applications. Posts are reminded that NCIC namechecks are valid for only one year after which they must be updated with a VISAS HAWK request. [See 9 FAM PART IV Appendix E, 300.] In cases where the principle alien was issued a visa at post, the post should establish a paper file for anticipated following-to-join applicants. Files should include, at a minimum, the following:*

- (1) A copy of the original petition;*
- (2) A copy of the principal alien's immigrant visa; and*
- (3) Copies of civil documents for each derivative applicant.*

## **9 FAM 42.42 PN2.2 Permanent Resident Card**

(TL:VISA-185; 02-26-1999)

*Apart from a complete file at post, the principal alien's Permanent Resident Card (Form I-551) is probably the best evidence of lawful permanent resident status. The Form I-551 indicates the visa category and date of entry into the United States. Posts are advised, however, that a resident alien does not receive a Form I-551 immediately. The demand on the INS card facilities to produce an increasing variety and number of cards has significantly increased the waiting period for the Permanent Resident Cards. The wait for a card can be up to a year, and, in some cases, even longer. Posts are, therefore, cautioned **not** to require the Form I-551 as a prerequisite for all following-to-join cases.*

## **9 FAM 42.42 PN2.3 ADIT Stamps**

(TL:VISA-185; 02-26-1999)

a. *When an immigrant enters the United States, INS endorses his or her passport with an ADIT (Alien Documentation and Identification System) stamp. The ADIT stamp shows the:*

- (1) Date of entry into the United States;*
- (2) Visa category; and*
- (3) Employment authorization.*

b. *This is the only evidence that the resident alien will carry until the Form I-551 is received. ADIT stamps have, however, proven to be highly susceptible to fraud and thus should be cautiously accepted as primary evidence of following-to-join status. However, an ADIT stamp can be very useful secondary evidence indicating that the individual may have a claim to derivative status and/or as a source of necessary data that may be missing from a file.*

## **9 FAM 42.42 PN2.4 Form I-824**

(TL:VISA-185; 02-26-1999)

*Legal residents who obtained status by adjustment of status in the United States, can request that INS send the Form I-824, Application for Action of an Approved Application or Petition, to post as verification of their status. The Form I-824 provides the information necessary to process a following-to-join case. At the legal resident's request, INS will sometimes send a cable to post verifying the principal alien's resident status.*

## **9 FAM 42.42 PN2.5 VISAS Badger**

(TL:VISA-185; 02-26-1999)

a. *In those instances where there is no other means to obtain the necessary information (e.g., naturalization certificate, Form I-181, post files, etc.) INS has agreed to provide this information via the VISAS BADGER/VISAS SIXTY-SEVEN procedure. [See 9 FAM PART IV Appendix E, 300.] **This telegraphic procedure should not be used merely to confirm information already available.** The INS VISAS SIXTY-SEVEN response will include the:*

- (1) Principal alien's visa category;*
- (2) Chargeability;*
- (3) Priority date; and*
- (4) Date of admission.*

b. *The VISAS BADGER/VISAS SIXTY-SEVEN procedure can take up to eight weeks or more to complete. Given express mail and other means of communication, it may be more advantageous for the applicant to request the necessary documentation from the principal alien. Posts with a local INS office may want to consider establishing a protocol for checking the principal alien's claim to legal residence against the INS Central Index System (CIS). In real emergencies, consular officers may request assistance from the Department (CA/VO/F/P) in verifying the principal alien's status.*

## **9 FAM 42.42 PN3 Self-petitioning for Battered Spouses and Children**

(TL:VISA-170; 10-01-1997)

The self-petitioning spouse or child must file Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, together with the fee (unless waived). Unless the alien is eligible for adjustment of status under INA 245, the self-petitioner must file with the INS Service Center having jurisdiction over the self-petitioner's place of residence in the United States. Self-petitions cannot be adjudicated by an INS office or U.S. consulates or embassies abroad.